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THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. GAYLORD S. STRONG, Defendant and Appellant.	A133882 (Alameda County Super. Ct. No. C162013)

Appellant Gaylord S. Strong agreed to a negotiated disposition in which he received a 13-year sentence in exchange for admitting a gun use enhancement and pleading no contest to a charge of committing a lewd act upon a minor. Appellant's court-appointed counsel has briefed no issues and asks this court to review the record as required by *People v. Wende* (1979) 25 Cal.3d 436. We have done so and find no issues that merit further briefing.

FACTUAL AND PROCEDURAL BACKGROUND

In late January of 2009, thirteen-year old Jane Doe met another girl, Sasha, while in juvenile hall in Contra Costa County. On February 2, Doe and Sasha ran away from a group home near juvenile hall. Appellant picked up the two girls in his car. It appeared to Doe that appellant and Sasha knew each other. Appellant took the girls to the Oaks Motel in Oakland, where Doe stayed with appellant and Sasha for the next two weeks. According to Doe, appellant and the two girls went to International Boulevard "so we could prostitute." Doe had sex with only one man while she was "prostituting."

On February 16, two weeks after running away from the group home, Doe told appellant she was going to leave. Appellant grabbed her, threw her on the bed, and told her, " '[y]ou're not leaving.' " He sat on top of her and put a gun to her head. He then pulled down her pants and raped her. He put the gun down on the bed, near Doe's head, while having sex with her. After he finished, he went into the bathroom. Doe got up, pulled up her pants, and tried to leave. Appellant came out of the bathroom, grabbed Doe by the arm, and threw her back on the bed. He then put something that was "white and . . . crushed up" down her throat. She "felt weird" and "kind of dizzy," but this time she was able to run away from him and leave the motel. At a nearby gas station, she saw her brother's friend, who gave her money for a BART ticket and a ride to a BART station, where she took a train and returned home.

In a three-count information filed October 20, 2009, the Alameda County District Attorney charged appellant with one count of aggravated sexual assault of a child by rape (Pen. Code, §§ 261, subd. (a)(2), 269, subd. (a)(1)), one count of committing a lewd act on a minor (Pen. Code, § 288, subd. (a)), and one count of pandering by encouraging (Pen. Code, § 266i, subd. (a)(2)). As to the count for aggravated sexual assault, it was alleged that appellant personally used a firearm during the commission of the offense. (Pen. Code, §§ 12022.5, subd. (a), 12022.53, subds. (b) & (g)). The district attorney further alleged as to the count for committing a lewd act on a minor that appellant was armed with and personally used a firearm during the commission of the offense. (Pen. Code, §§ 667.61, subd. (e)(4), 12022, subd. (b), 12022.3, 12022.5, and 12022.53, subd. (b).) As to the pandering charge, it was alleged that the person encouraged by appellant was under 16. (Pen. Code, § 266i, subd. (b)(2).) It was further alleged that appellant had served two prior prison terms within the meaning of Penal Code section 667.5, subdivision (b).

On April 4, 2011, appellant pleaded no contest to the charge of committing a lewd act upon a minor and admitted the firearm use enhancement charged under Penal Code section 12022.5, subdivision (a), in exchange for an agreement that he would be sentenced to serve thirteen years in state prison. The prosecutor also agreed to dismiss

the remaining counts and allegations. Pursuant to the plea, appellant waived his right to appeal his conviction. The court found a factual basis for the plea based upon the transcript of the preliminary hearing and the parties' stipulation.

The court sentenced appellant on May 4, 2011, in accordance with the plea bargain. Appellant received a prison sentence of 13 years, composed of the low term of three years for committing a lewd act on a child (Pen. Code, § 288, subd. (a)), plus a consecutive 10-year term for the firearm use enhancement (Pen. Code, § 12022.5, subd. (a)). The court awarded appellant 756 days of credit for actual time served, plus 113 days of conduct credit, for a total of 869 days presentence custody credit. The court imposed a restitution fine of $2,600 (Pen. Code, § 1202.4, subd. (b)) and a parole revocation fine in the same amount (Pen. Code, § 1202.45), which the court suspended pending successful completion of parole. The court also imposed a $40 court security fee (Pen. Code, § 1465.8), a $30 criminal conviction assessment fee (Gov. Code, § 70373), and a $250 probation investigation fee (Pen. Code, § 1203.1, subd. (b)). The court ordered appellant to register as a sex offender (Pen. Code, § 290) and provide DNA samples pursuant to Penal Code section 296.

On December 20, 2011, this court granted appellant's unopposed motion for constructive filing of the notice of appeal under the prison mailbox rule. In his notice of appeal, appellant noted that his appeal was based on his sentence or other matters occurring after his plea. He also purported to challenge the validity of his plea and sought a certificate of probable cause on the ground of ineffective assistance of counsel. In his request for a certificate of probable cause, appellant questioned how there could be a basis for a firearm use enhancement when the charge of committing a lewd act on a minor was not charged as a forcible offense. The trial court denied his request for a certificate of probable cause.

DISCUSSION

Appellant's counsel filed a brief identifying no potentially arguable issues and asking this court to independently review the record under *People v. Wende, supra,* 25 Cal.3d 436. Appellant was afforded an opportunity to file a supplemental brief with

this court but did not do so. We have reviewed the entire record and conclude no issue warrants further briefing.

DISPOSITION

The judgment is affirmed.

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McGuiness, P.J.

We concur:

_____
Pollak, J.

_____
Siggins, J.